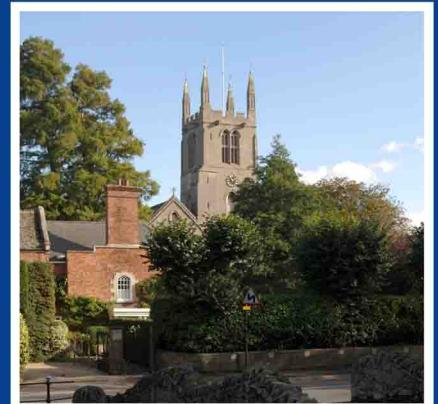




Development Management Enforcement Policy

OCTOBER 2014

November 2016



your council working for you

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INTRODUCTION

The Development Management section is responsible for the discharge of duties under the Planning Acts, including:

- Implementation of forward plans
- Regulation of use of land in the public interest
- Determination of planning applications
- Formal enforcement of breaches of planning control

Effective enforcement of planning controls is necessary to deliver high quality, sustainable development and to protect the integrity of the planning system. Ensuring that development proceeds in accordance with approved plans or permitted development rights is necessary to maintain this integrity.

An effective system of control requires strong powers of sanction against those who transgress regulatory provisions. The Town & Country Planning Act 1990 (www.legislation.gov.uk) contains extensive enforcement powers. However, enforcement action is a discretionary activity and will be invoked only where it is expedient to do so having regard to national and local policy and other material considerations and proves absolutely necessary after all other avenues have been explored. Any action considered must also be in accordance with the Council's Corporate Enforcement Policy.

<http://www.southkesteven.gov.uk/index.aspx?articleid=8678>

AIMS AND OBJECTIVES

The aim of the Council's Development Management Enforcement Policy is to ensure effective compliance with planning and other associated legislation, which itself is aimed at regulating the development and use of land in the public interest. Development should conform to the provisions of the South Kesteven Local Plan¹ and the National Planning Policy Framework (NPPF). The Council shall seek to ensure by education, promotion, monitoring, negotiation, formal action and, where expedient, necessary and appropriate, legal measures, that the quality, character and appearance of the built and natural environment is protected and enhanced.

In the exercise of its enforcement powers, the Council's objectives are to and as set out in the Council's Corporate Enforcement Policy:

¹ The Local Plan is comprised of the Core Strategy and other development plan documents (DPD) such as the emerging Grantham Area Action Plan and the district-wide Sites and Allocations Policies DPD.

- Strike an appropriate balance between the planning and development needs and the demands of the population, and the need, through regulatory control, to protect and enhance the environment and regulate the development and use of land in the public interest.
- Apply appropriate and proportionate remedies and wherever possible, without recourse to formal legal action wherever breaches of planning control do occur.
- Promote the need to protect and enhance the built and natural environment and the need to conform to regulatory controls.
- Allow acceptable development to take place.

DEVELOPMENT MANAGEMENT ENFORCEMENT POLICY

This policy document sets out the basic approach and principles to be followed by the Council in the discharge of its enforcement functions. In its preparation, account has been taken of procedural and policy advice as contained in the National Planning Policy Framework -

www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

and Planning Practice Guidance on Ensuring Effective Enforcement -
<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/>

This policy is intended to provide clear guidance to users of the planning system: members of the public, local businesses, elected members and service providers, about enforcement controls. It explains the powers available to the Council to remedy breaches of planning control, and the steps involved in seeking to secure a satisfactory outcome to complaints lodged.

Allied to the policy, and observing the key principles of the policy, working procedures have been developed relating to the most frequently occurring areas of enforcement activity. By the nature of the work involved however, these procedures cannot cover every eventuality. In the absence of a defined procedure, the Council will discharge its enforcement activities in accordance with the general principles of this policy.

This policy shall be monitored and evaluated periodically to ensure that it is relevant and applicable to the needs of the organisation and its customers, and to ensure it is implemented in a fair and consistent manner.

BREACHES OF PLANNING CONTROL

A breach of planning control may include the following:

- Building works that do not have planning permission
- Failing to comply with any condition or limitation, such as Section 106 Agreement, subject to which planning permission has been granted.
- Unauthorised changes of use
- Unauthorised works to Listed Buildings

- Demolition work within conservation areas
- Works to a protected tree or tree in a conservation area
- Displaying adverts without consent
- Neglecting land or property to the extent that it causes harm to local amenity
- High hedge disputes
- Removal of hedgerows

In the vast majority of cases, it is not an offence to carry out development without first obtaining planning permission or other consents. Only certain works constitute an immediate offence, carrying the risk of criminal sanctions. These include:

- Works to a Listed Building
- Works to protected trees or trees within a conservation area
- Removal of most hedgerows other than those in urban areas or on or within residential curtilages
- The display of adverts

There are certain issues that the Council cannot take into account when assessing an alleged breach because they are not planning matters. These may include:

- Loss of value to property
- Competition with other business
- Trespass or boundary disputes
- Private disputes
- Breaches of a covenant
- Party Wall disputes

The list of above matters is not exhaustive. However, those mentioned are likely to be private civil matters in which the Council has no legal right of intervention.

EXPEDIENCY

The carrying out of works or development without the prior approval of the Council may be unauthorised and action may be taken against the person causing the breach and persons having an interest in the land. However, such action will only be considered when it is expedient to do so.

The expediency of enforcement action is a key concept to the application of this policy and the work of the officers in Development Management. It will not normally be expedient to take enforcement action where a breach of planning control occurs but where there is;

- (i) no significant conflict with national or local policy; or
- (ii) a reasonable prospect that planning permission might be granted, subject to conditions; or

- (iii) no significant or immediate harm to the amenity or safety of residents or to the environment or other interests of acknowledged importance.

In considering any enforcement action, the decisive issue for the Council is if the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. Enforcement action should always be commensurate with the breach of planning control to which it relates.

Council Officers will consider whether it is expedient to take formal enforcement action on a case by case basis, by considering the merits of the specific development against current planning policy and guidance, having regard to any other material planning considerations and the Council's Corporate Enforcement Policy.

REPORTING ALLEGED BREACHES OF PLANNING CONTROL

Enforcement enquiries are received in relation to suspected breaches of planning legislation. The Council finds, in over 50% of cases, that there is no breach of planning control.

The majority of enquiries received are made by members of the public where they believe planning controls are being breached.

Other planning enforcement matters may be identified by Council officers during the course of their normal operations. These matters will be treated in the same way as if they had been made by a member of the public.

The Council may also monitor conditions imposed on permissions for some large or contentious development sites to ensure that relevant conditions are discharged at the appropriate times.

Planning Obligations such as Agreements made under Section 106 of the Town and Country Planning Act 1990 will be monitored to ensure the timely payment of developer contributions and accurate allocation of funds to relevant schemes.

Enquiries about an alleged breach of planning control can be submitted to The Council in person, by telephone, letter, e-mail, fax or using the enquiry forms on our website (www.southkesteven.gov.uk).

The Council will not normally act upon anonymous enquiries other than in circumstances where there may be an immediate criminal offence, a threat to public safety or a clear, credible threat to the proper planning of the area. Any investigations into anonymous enquiries in these circumstances will be at the discretion of The Council. This is to protect against malicious and vexatious complaints.

The Council will not reveal the identity of an informant to an alleged offender. We may be asked to reveal the identity of an informant, but we will always apply the rights of the individual in accordance with The Data Protection Act 1998 and any other appropriate legislation.

Anybody who has a legitimate concern but wishes to keep their identity confidential to Council Officers may enlist the services of their local councillor to make a complaint on their behalf.

The Council also requires some contact details from a complainant so that they may be kept informed of the progress of the investigation and approached for further information should this prove necessary.

RESPONDING TO ENQUIRIES

When an enquiry is received, details of the alleged breach will be registered.

This registered information will contain full details of the allegation and the particulars of the complainant and defendant. It will also be used to keep up to date records of investigations on an ongoing basis. Throughout the course of an enforcement investigation detailed records of the complaint, and any investigations, actions and outcomes will be maintained.

The Council will provide an acknowledgement of an enquiry providing contact details of the investigating officer **within 3 working days** of the complaint being received.

The site will be inspected **within 10 working days** of the enquiry being received.

PROCEDURES FOR DEALING WITH BREACHES OF PLANNING CONTROL

If a breach of planning control is identified as a result of the initial investigations, the most appropriate course of action to achieve a satisfactory outcome will depend on the severity and seriousness of the breach.

The Planning Acts grant rights of entry onto land to authorised planning personnel, for the purposes of investigating an alleged breach of planning control. Wilful obstruction of this right of entry is an offence and we can seek a warrant may be sought authorising entry.

After the first site visit, an initial assessment will be conducted to prioritise cases. The Council will respond to enquiries according to a priority system to manage enforcement proactively according to the needs of the District and in the public interest. The priority system is based on a number of criteria that will result in cases being High, Medium or Low priority as set out in the table below.

Type of Breach	High	Medium	Low
Adverts		Unacceptable traffic / amenity issues	Acceptable, no material harm or adverse impact
Breach of Conditions	Unacceptable harm caused	Technical matter, work would be agreed	
Change of Use	Unacceptable harm caused	Harm can be resolved – use of equipment / operating hours	No material harm or adverse impact
Listed Buildings	Works fronting street/conservation area	Internal works and works not visible from main road	Acceptable, material harm or adverse impact
Operational Development	Unacceptable harm caused	Acceptable with conditions / amendments	Acceptable, no material harm or adverse impact
Trees and Hedges	TPO trees felled / works	Works to hedgerows	
Untidy Land		Adverse impact / materials	Overgrown land or vegetation.

The enquirer will be informed of the outcome of these initial investigations **within 10 working days** of the site visit. Should the investigation prove inconclusive, an update of the situation will be provided. Thereafter, the onus will be placed on the enquirer to contact the enforcement officer for updates of any ongoing investigations. If the investigation reveals that there is no breach of planning control, the case will be closed and the complainant informed of the conclusion.

In investigating any alleged breach of planning control, the Enforcement team may consult other Council departments and Agencies where it is felt they may have an interest in the allegation. Such departments may include:

- Building Control
- Environmental Health
- Housing Services
- Lincolnshire County Council (www.lincolnshire.gov.uk)
- Highway's Agency (www.highways.gov.uk)
- Environment Agency (www.environment-agency.gov.uk)

These departments/agencies may have powers to deal with the matter which may prove more effectively deal with the harm than planning controls. In such cases, the Enforcement team will liaise with these departments/agencies to agree the most suitable course of action.

Planning Permission likely to be granted**a) Medium / High Priority Cases:**

Following a full investigation of the case, where it is felt that the breach of planning control might reasonably be granted planning permission subject to conditions, the person causing the breach will be invited to submit a retrospective planning application for determination.

Upon receipt of any application, it will be published in accordance with the Council's Code of Practice, and third parties invited to comment.

The application will be decided in line with the Council's normal procedures for dealing with planning applications.

If the person causing the breach fails to submit a valid planning application, the matter will be carefully assessed on the basis of national and local planning policies and against any other material considerations with a view to decide whether any further formal action is expedient. This decision will be made in line with the Council's scheme of delegated authority, which is part of the Council's Constitution.

b) Low Priority Cases:

These cases will be carefully assessed on the basis of national and local planning policies and against any other material considerations with a view to decide whether any formal action is expedient. It is usually not appropriate to invite a retrospective application or take formal enforcement action against minor or technical breaches of control which cause no material harm or adverse impact to amenity in the locality of the site.

Planning Permission unlikely to be granted

Where the works or development are unacceptable in planning terms, and unlikely to be capable of being rendered acceptable through a grant of planning permission with conditions or limitations, the person causing the breach will be advised of the unacceptability of the works carried out and advised to cease operations, and to restore the buildings or land to their pre-existing state.

Whilst the person causing the breach usually has the right to submit a retrospective planning application, they will be advised that any such application would not be likely to be supported by Council officers.

The person causing such a breach will be advised that continuing to build/operate is at their own risk, subject to any future formal enforcement action and in cases of severe harm, they may be asked to cease operations immediately. They will be advised that failure to respond within a defined time period (which will reflect the nature of the breach), may result in authority being sought to take formal enforcement action.

The decision on the form and type of enforcement action will be taken in accordance with the scheme of delegated authority as set out in the Council's Constitution.

ENFORCEMENT ACTION

Where it becomes apparent that a person causing a breach of planning control is unwilling to comply, either with Officer's suggestions of a voluntary solution or with the terms of an existing permission or to cease an unauthorised use or building works, the Council will consider the initiation of formal measures to secure compliance.

The Council has a number of formal options available to assist in resolving a breach of planning control. Not all options will be suitable in each case, and any option used will be dependent on the facts on the case.

Any Formal Notice issued which appears on the Land Charges Register will be available to members of the public to view, either at the Council's Offices, or on the Council's website.

Summary of some key powers available to officers:

Requisitions for information

Officers may require certain pieces of information from owners/developers in order to issue formal notices or further an investigation. Notices to request such information may be issued in the form of:

- Planning Contravention Notice
- Notice under Section 330 of the Town and Country Planning Act 1990
- Notice under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 (as amended)

It is an offence not to respond to any such notice within a prescribed timescale and offenders may be prosecuted for failure to do so.

A Planning Contravention Notice will appear on any search of the property and may affect any sale or mortgage.

Enforcement Notice

The Enforcement Notice is the main device available to the Council and sets out the nature of the alleged breach, the steps required for compliance and the timescale allowed to comply. Such a notice may be served when the Council are satisfied that there has been a breach of planning control and that it is expedient to take action.

The recipient(s) of an Enforcement Notice have a right of appeal against the notice on a number of grounds. Any appeal is determined by the Planning Inspectorate. Any appeal suspends the effect of a notice until the appeal is determined. If the recipient(s) lodge an appeal, we will communicate with all appropriate third parties and neighbours of the appeal and how they can make representations to the Planning Inspectorate.

Ultimately the failure to comply with the steps required by an effective Enforcement Notice is a criminal offence and currently attracts a maximum fine on conviction of £20,000.

Breach of Condition Notice

A Breach of Condition Notice (BCN) can be served on a developer or occupier when they do not comply with planning conditions imposed on a planning permission.

There is no right of appeal to the Secretary of State against a BCN. An appeal must be pursued through the courts

It is a criminal offence to fail to comply with a BCN within the period for compliance specified.

Listed Building Enforcement Notice

This is similar to an Enforcement Notice in terms of procedures to be followed. It may be issued where works affecting the character of a listed building are being, or have been, carried out in the absence of listed building consent.

The notice can specify steps to be taken to restore the building to its former state, to alleviate the effect of the unauthorised work, or to bring the building to the state that it would have been in had any listed building consent been fully complied with.

An appeal against a Listed Building Enforcement Notice suspends the notice until the outcome of the appeal.

Again, failure to comply with the steps of a notice is a criminal offence. It should be noted that unauthorised works to a listed building are themselves a criminal offence.

Stop Notice

A Stop Notice is served either with or after an Enforcement Notice if it is considered that continuing with unauthorised operations will cause irreparable and immediate significant harm. The scale of harm must be significant to warrant recourse to such a notice.

The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice.

There is no right of appeal and failure to comply with the notice is a criminal offence. There are compensation liabilities on the Council if the Enforcement Notice is quashed.

Temporary Stop Notice

This notice can be served if we consider it is necessary to restrict unauthorised activity or development immediately to safeguard the amenity of the area and prevent further irreparable harm. However, the harm caused by the unauthorised development must be severe, to warrant recourse to service of such a notice because there can be compensation awarded where the Council is found to have been unreasonable in issuing such a notice.

The Temporary Stop Notice differs from the normal Stop Notice powers as it is immediate and does not have to be accompanied by an Enforcement Notice. The notice has effect for up to 28 days while considering whether further enforcement action is necessary.

There is no right of appeal to the Secretary of State but a judicial review can challenge the validity and propriety of the decision.

Injunction

The Council can apply to the County Court or High Court for an injunction to cease an actual or imminent breach of planning control.

Clear and robust evidence of the potential significant harm arising from the actual or imminent use must be provided when seeking an injunction for an imminent breach. An injunction will normally need to demonstrate harm to a key policy consideration.

Injunctions may be considered as a supplement to other statutory powers, particularly where an immediate response is required.

Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

Section 215 Notice

This notice can be served on the owner and occupier of the land if the Council considers that harm to the amenity of part of its administrative area is adversely affected by the condition of the land.

The notice specifies steps to remedy the condition of the land but it cannot take effect until 28 days after it is issued.

Then the notice must give a compliance period for when the works specified in the notice should be complied with.

Prosecution

Action to prosecute offenders may be taken where it is in the public interest to do so and other powers cannot resolve the matter more effectively. Examples of where this course of action may be considered are when:

- a notice is not complied with in the given timescales
- irreparable damage is caused to a listed building or protected tree
- there are repeated breaches of advertisement regulations or fly-posting

All investigations into alleged breaches of legislation where prosecution is to be considered will follow best professional practice as set out in the Council's overarching policy. Investigations must also follow the requirements of the Police and Criminal Evidence Act (PACE) 1984, Criminal Procedure and Investigations Act (CPIA) 1996, the Regulation of Investigatory Powers Act (RIPA) 2000 and the Human Rights Act 1998.

Formal Caution

The Local Planning Authority may consider Formal Cautions as an alternative to prosecution. Examples of where they may be appropriate are:

- To deal quickly and simply with less serious offences;
- To divert less serious cases away from the court process;
- To deter repeat offences.

Before a Caution is administered the officer will ensure:

- There is evidence of the offender's guilt sufficient to sustain a prosecution;
- The offender admits the offence;
- The offender understands the nature of the Formal Caution and agrees to be cautioned for the offence.

Default Powers

In the event of a defendant not complying with the terms of a formal notice, the Council has 'default' powers to enter land and carry out the necessary works.

The Council may also recover their reasonable expenses from the then owner of the Enforcement Notice Land.

Expenses incurred become a legal charge on the land until such time as the expenses are recovered. This charge is binding on successive owners of the notice land.

OTHER POWERS

The Council has various other powers at its disposal to deal with breaches of planning control that are not covered by the provisions of the notices or actions detailed above. Some of these powers are detailed below.

Unauthorised Advertisements

The display of advertisements is controlled under The Town and Country Planning (Control of Advertisements) Regulations 2007.

Advertising rules are complex and seek to control amongst other things: the height, size and illumination of the advertisements. However, the content of an advert that does have consent (either granted by the Council, or with Deemed Consent under the Advertisement Regulations) is not something that Planning Controls can be used to take action over.

It is an offence to display an advertisement without the consent required and it is open to the Council to pursue prosecution in the Magistrates Court for an offence under the Advertisement Regulations. The maximum fine on conviction for the display of unauthorised advertisements is currently £2,500 with additional fines on conviction for continuing offences.

Where advertisements are displayed on the highway or walls and other enclosures bounding the highway, the Council can take direct action. Normally, a minimum of two days is given to remove an unauthorised advertisement or it will be removed and destroyed.

Fly-posting

Fly-posting is the display of any advertisement or other promotional material without permission, on buildings, posts, poles, litter bins and elsewhere in public places.

Fly-posting without a permit is illegal under the Highways Act 1980, the Town and Country Planning Act 1990, the Anti-Social Behaviour Act 2003 and the Clean Neighbourhoods and Environment Act 2005.

Offenders may be pursued under the provisions for unauthorised advertising in The Town and Country Planning (Control of Advertisements) Regulations 2007 (Please see **Advertisements** above), or referred to other agencies.

Officers will maintain a database of Fly-Posting incidences that are reported. Warnings, highlighting the relevant legislation, will be sent to the person/persons responsible for the display of the advert and further action escalated against repeat offenders as appropriate. Repeat offenders may be issued with a Formal Caution or prosecuted under the Advertisement Regulations 2007.

Works to Protected Trees

Under the Town and Country Planning legislation the local planning authority may protect important trees in the district by making Tree Preservation Orders.

Any unauthorised works to such protected trees is a criminal offence. Trees in Conservation Areas are also afforded a degree of protection under the planning legislation. Unauthorised work to and/or removal of trees in a Conservation Area also constitutes a criminal offence.

The Council has powers to prosecute offenders and/or require replacement trees to be provided. In circumstances where it is a first offence, the Council may offer the defendant a caution and ask for a contribution towards their costs instead of a formal prosecution. If there is a repeat offence, the caution will be presented to the courts in any subsequent prosecution.

Removal of Hedgerows

Certain hedgerows, usually those outside of built up areas and not forming residential boundaries are afforded protection under the Hedgerow Regulations (1997).

Removal of protected hedgerows without consent is an offence. The Council has powers to prosecute offenders and/or require replacement hedges to be provided.

Monitoring of Planning Obligations

Planning Agreements provided under Section 106 of the Town and Country Planning Act 1990 are agreements made between the Local Planning Authority and a developer. Unilateral undertakings are made by the developer. Both aim to make proposed development acceptable and accord with planning policies. Such obligations may restrict development or use of land, may require certain operations to be carried out, or may require payments to be made to the Authority.

The Council monitors these planning obligations to ensure that operations are carried out and payments made in accordance with the terms of each agreement.

Requirements to comply with planning obligations run with the land so if the terms of an obligation are not complied with, enforcement action may be taken against persons acquiring an interest in the land.

Should there be a breach of a formal obligation there are three methods of enforcement open to the Council. The Council may:

- Apply to the County Court or High Court for an Injunction. The Council must prepare a high level of evidence to convince a judge that an injunction is necessary. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.
- Enter the land to complete works and may recover costs where certain operations or works have not been carried out, but must give at least 21 days notice of our intention.
- Place a charge on the land in order to assist the Council in proceedings to recover costs incurred.

High Hedge Disputes

The Council has powers under Part 8 of the Anti-social Behaviour Act 2003 to deal with complaints about high hedges. The legislation enables the owner or occupier of a domestic property affected by a high hedge to make a complaint to the Council provided that:

- the hedge concerned is a line of two or more predominantly evergreen or semi-evergreen trees or shrubs
- the hedge is 2 metres or more high
- the hedge is forming a barrier to light or access to their home or garden
- attempts have been made to amicably resolve the problem with the owner of the hedge.

The Council's role is not to mediate or negotiate between the complainant and the hedge owner, but to adjudicate on whether the hedge is adversely affecting the complainant's reasonable enjoyment of his property.

If the circumstances justify it, the Council will issue a remedial notice to the hedge owner setting out what the hedge owner must do to remedy the problem. The notice may specify future work on the hedge to ensure that it is maintained at a reasonable height.

The Act allows for an appeal to the Secretary of State against the issue or withdrawal of a remedial notice.

The Council will charge a non-returnable fee of £360 for this service, payable on submission of a complaint.

CONTACTS AND FURTHER INFORMATION**Planning Enforcement Team**

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Department for Communities and Local Government

(The Government Department with overall responsibility for planning)

Eland House
Bressenden Place
London, SW1E 5DU
www.dclg.gov.uk

National Planning Aid Unit (Royal Town Planning Institute)

Unit 419, The Custard Factory,
Gibb Street,
Birmingham
B9 4AA
www.planningaid.rtpi.org.uk

Planning Inspectorate

Room 301 Kite Wing,
Temple Quay House,
2 The Square,
Temple Quay,
Bristol, BS1 6PN.
www.planning-inspectorate.gov.uk/pins/index.htm

Planning Portal (www.planningportal.gov.uk)

The Government's online planning resource where you can learn about the planning system and research the latest government policy.

National Guidelines (www.legislation.gov.uk)

- The Town & Country Planning Act 1990
- The Town and Country Planning (General Permitted Development Order) (England) Order 20151995 (As Amended)
- The Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990
- The Town and Country Planning (Control of Advertisements) Regulations 2007
- The Enforcement Concordat published by the Cabinet Office 1998
- The Regulators' Code of Compliance published by the Department for Business Enterprise and Regulatory Reform 2008
- The Regulation of Investigatory Powers Act 2000
- The Anti Social Behaviour Act 2003
- [Anti-social Behaviour, Crime and Policing Act 2014](#)
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- The Human Rights Act 1998
- The Hedgerow Regulations 1997
- National Planning Policy Framework 2012
- National Planning [Practice](#) Guidance-2014

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